UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD R. VISSER, ROBERT HOSSFELD, MARIE HOSSFELD, and BEN JOHNSON, individually and as the representatives of a class of similarly situated persons, Plaintiffs, vs. CARIBBEAN CRUISE LINE, INC., CONSOLIDATED TRAVEL HOLDINGS GROUP, INC., DANIEL LAMBERT and ROBERT P. MITCHELL,[1] Defendants.	Case No.: 1:13-cv-01029-PLM-PJG

DEFENDANT CARIBBEAN CRUISE LINE, INC.'S
MOTION FOR LEAVE TO SUPPLEMENT ITS RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Defendant Caribbean Cruise Line, Inc. ("CCL"), by and through undersigned counsel, pursuant to Local Civil Rule 7.1(c), files this Motion for Leave to Supplement its Response in Opposition to Plaintiff's Motion for Class Certification and in support thereof states the following:

1. Local Civil Rule 7.1(c) provides that "[i]n its discretion, the Court may in a particular case shorten or enlarge any time limit or page limit established by these rules, with or without prior notice or motion."

2. On August 31, 2015, Plaintiff Donald R. Visser filed a Motion for Class Certification.[2]

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[1] Robert Mitchell was dismissed pursuant to Court Order based upon the Court's determination that it does not have personal jurisdiction over Mitchell. (Dkt. No. 21).
[2] Dkt. No. 145.

3. On October 12, 2015, CCL filed its Response in Opposition to Plaintiff Visser's Motion for Class Certification (the "Response").[3]

4. The Response identifies a number of individualized inquiries that the proposed class requires, rendering it unsuitable for certification. Also, the Response argues that "even if [Visser] is a member of the proposed class, since Visser does not claim any actual damages or injury in fact separate from a violation of the TCPA or MHSSA, he lacks standing. This renders him an inadequate class representative as a matter of law."[4]

5. A footnote to the above-quoted language states, "Although the Sixth Circuit appears to have ruled that Article III standing can arise from a mere statutory violation, (*Imhoff Inv., L.L.C. v. Alfoccino, Inc.*, 792 F.3d 627, 633 (6th Cir. 2015)), the issue is presently before the Supreme Court and is expected to be decided this term. *See Spokeo, Inc. v. Robins*, No. 13-1339 (U.S.)."[5]

6. On May 16, 2016, the Supreme Court issued its decision in *Spokeo*. In a 6-2 ruling, the Supreme Court vacated the Ninth Circuit's decision for not considering whether the plaintiff's alleged injury from a statutory violation was sufficiently concrete to establish injury-in-fact.[6] In clarifying what qualifies as a sufficiently concrete injury in a claim seeking only statutory damages for violation of a statutory provision, such as Plaintiff asserts here, the Supreme Court explains:

> Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right. *Article III standing requires a concrete injury even in the context of a statutory violation.*

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[3] Dkt. No. 178.
[4] Resp. at 31.
[5] *Id.* at 31, n.133.
[6] *Spokeo, Inc. v. Robins*, No. 13-1339, 2016 WL 2842447 (U.S. May 16, 2016). A true and correct copy of the *Spokeo* decision is attached hereto as **Exhibit A**.

For that reason, Robins could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III. . . .[7]

7. The *Spokeo* decision adds to the class certification analysis in this case in two significant ways. First, it affects the analysis of whether the proposed class, which may consist of persons who cannot be deemed to have been injured in any way (for a host of possible reasons that cannot be determined absent individualized inquiries), satisfies the various requirements of Federal Rule of Civil Procedure 23. Second, *Spokeo* overrules *Imhoff* and further supports CCL's argument regarding Visser's lack of standing and his inadequacy as a class representative.

8. CCL, of course, was unable to cite the *Spokeo* decision in its Response or apply its rationale to the proposed Class because the decision was not issued until several months after the briefing on Plaintiff Visser's Motion for Class Certification was completed.

9. In order for CCL to make its arguments based on the newly-issued *Spokeo* decision and for the Court to be fully informed and apprised of the legal issues presented on Plaintiff Visser's Motion for Class Certification before deciding that Motion, CCL requests permission to to supplement its Response by no more than five pages to discuss *Spokeo* and its application to the class certification analysis.

WHEREFORE, Caribbean Cruise Line, Inc. respectfully requests that this Court enter an Order granting this Motion for Leave to Supplement its Response in Opposition to Plaintiff's Motion for Class Certification, and order such further relief as this Court deems just and proper.

DATED: May 24, 2016

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[7] *Id.* at *7-8 (emphasis added).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 24, 2016, a true and correct copy of the foregoing was electronically filed with the Clerk of Court by using CM/ECF, which will serve copies to all counsel of record registered to receive CM/ECF notification, and served upon any other counsel and parties in some other authorized manner.

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